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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/658,249

09/08/2003

Waltherus W. Van Den Hoogenhof

5926P016

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10/02/2007

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EXAMINER

HYUN, PAUL SANG HWA

ART UNIT

PAPER NUMBER

1743

MAIL DATE

DELIVERY MODE

10/02/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary****Application No.**

10/658,249

**Applicant(s)**VAN DEN HOOGENHOF,  
WALTHERUS W.**Examiner**

Paul S. Hyun

**Art Unit**

1743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 14 August 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 8-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 8-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All   b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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## DETAILED ACTION

### REMARKS

The R.C.E. filed by Applicant has been acknowledged. Claims 8-12 are currently pending. Applicant amended claims 9-11 and added new claim 12.

It should be noted that claims 9-11 are mislabeled as "previously presented". They should have been labeled as "currently amended" because the amendment filed on 8/14/07 was not entered.

The claim rejection under 35 U.S.C. section 112 cited in the previous Office action has been withdrawn in light of the amendments.

Despite the amendments, the applicable art rejection cited in the previous Office action is maintained.

### ***Double Patenting***

Applicant is advised that should claim 10 be found allowable, claim 11 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims **8-12** are rejected under 35 U.S.C. 103(a) as being unpatentable over Solazzi (US 6,009,766) in view of Nelson (US 3,861,555).

Solazzi discloses a sample cup used for X-ray spectroscopy. The sample cup comprises a cavity for receiving a liquid sample and an open top adapted to be covered by a flexible polypropylene film (see line 67, col. 3). The cup disclosed by Solazzi differs from the claimed invention in that Solazzi does not disclose a cover that is smaller than the opening of the sample container and capable of freely moving relative to the container walls. Solazzi also does not explicitly disclose a method for conducting X-ray spectroscopy.

With respect to the cover, Nelson discloses that floating covers are well known in the art (see lines 1-10, col. 1). Nelson discloses, "It is common practice to provide tanks containing volatile liquids with internal floating covers that rise and fall in the tanks in accordance with the depth of the liquid therein. These covers reduce or eliminate the air space above the liquid and thereby control evaporation which otherwise would cause loss of a considerable amount of the liquid..." In light of the disclosure of Nelson, it would have been obvious to one of ordinary skill in the art to substitute the film disclosed by Solazzi with a floating cover when storing highly volatile liquids to eliminate evaporation. Although the cover disclosed by Nelson is not directed towards containers

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used for X-ray spectroscopy, one of ordinary skill in the art would recognize and apply Nelson's disclosure to any liquid storage means.

With respect to the method of conducting X-ray spectroscopy, Solazzi discloses that the sample cup is intended for X-ray spectroscopy. Therefore, it would have been obvious to one of ordinary skill in the art to conduct X-ray analysis of the contents of the cup disclosed by Solazzi.

### ***Response to Arguments***

Applicant did not traverse the art rejection in the response filed on 8/14/07. However, because the art rejection is maintained, Applicant's arguments filed on 07/10/07 will be addressed. That said, Applicant's arguments with respect to the art rejection have been fully considered but they are not persuasive.

First Applicant argues that the claimed invention is distinguishable from the container disclosed by Solazzi. This argument is not persuasive because one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). In this case, combination of Solazzi and Nelson disclose all the claim limitations.

Second, Applicant argues that the claimed invention is distinguishable from the cited references because the cover disclosed by Nelson is not freely movable with respect to the walls of the container that it covers. This argument is not persuasive because the cover disclosed by Nelson was not relied upon in the Office action. Rather, the disclosure of Nelson referring to what is well known in the art was relied upon.

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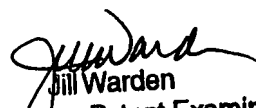
Lastly, Applicant argues that Nelson is not analogous art and therefore, reliance on its disclosure is inappropriate. This argument is not persuasive because Nelson is analogous art. Nelson and the claimed invention are both directed toward solving the problem of evaporation produced by the overhead space in a liquid container.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul S. Hyun whose telephone number is (571)-272-8559. The examiner can normally be reached on Monday-Friday 8AM-4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on (571)-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

PSH  
9/29/07

  
Jill Warden  
Supervisory Patent Examiner  
Technology Center 1700